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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1940

No. 215

TOVREA PACKING COMPANY,  
*Petitioner,*  
v.  
U.S.

NATIONAL LABOR RELATIONS BOARD.

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT  
THEREOF.**

DENISON KITCHEL,  
*Attorney for Petitioner,*

July 3, 1940.



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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF  
THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Tovrea Packing Company, respectfully prays that a writ of certiorari be issued to review a decree of the United States Circuit Court of Appeals for the Ninth Circuit enforcing an order of the National Labor Relations Board.

**Opinion Below**

The opinion of said Circuit Court of Appeals is reported in 111 Fed. (2d) 626 in a proceeding entitled *National Labor Relations Board vs. Tovrea Packing Company* (R. 532-544). The order of the National Labor Relations Board, enforcement of which was granted, is reported in 12 N. L. R. B. 1063 (R. 61-108).

## **Jurisdiction**

The decree of the Circuit Court of Appeals was entered on April 30, 1940 (R. 544-548). Petition for rehearing filed on May 15, 1940, was denied on June 20, 1940 (R. 548-549). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (43 Stat. 938; 28 U. S. C. A. Section 347).

## **Question Presented**

The sole question presented by this petition is one of the proper interpretation of the term "agricultural laborer" as used in Section 2(3) of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C. A. Section 151 et seq.). This section is set forth in the appendix to this petition.

## **Statement of Fact**

One of the principal agricultural pursuits carried on in the State of Arizona is the feeding of livestock (R. 116). The major portion of this livestock feeding is done in the irrigated Salt River Valley in which the City of Phoenix, Arizona, is located. It is estimated that an average of approximately 100,000 head of livestock are fed annually in the Salt River Valley (R. 116-117). The purpose of livestock feeding is to improve the quality of the meat and insure a higher market price (R. 117). The operation, as compared with range grazing of livestock, consists of concentrating livestock in special feeding pens for periods of time averaging four or five months in length and there feeding them special feed and combinations of feed, such as chopped hay, hegira ensilage, cotton seed meal, cotton seed hulls, barley, and molasses in varying quantities. All of these feeds, with the exception of molasses, are raised in the Salt River Valley (R. 118-120, 124-252). The nature of this process, its purpose, the manner of conducting it

and the character of the work performed by those employed are substantially the same in all feeding operations in the valley, irrespective of by whom or where they are conducted (R. 118-252).

Petitioner is engaged in the meat packing business. It maintains a packing plant in the neighborhood of Phoenix, Arizona, where it slaughters and processes livestock (R. 187-188). Petitioner is also engaged in the business of feeding livestock. These feeding operations are carried on at five different locations in the vicinity of Phoenix, Arizona, the feedlots of four of these units of petitioner's feeding operations being located on ranches somewhat removed from the packing plant and the feedlots of one unit being located adjacent to the plant (R. 189). This petition raises the sole question of whether or not individuals employed as livestock feeders in the feedlots adjacent to petitioner's packing plant are agricultural laborers within the meaning of that term as used in Section 2(3) of the National Labor Relations Act.

The sources of the livestock fed in all five units of petitioner's livestock feeding operations are the same. Livestock are interchanged between the five units. The sources of the feed used at all five units are the same. The nature of the fattening process carried on at all five units is the same. The condition of the livestock, the size and structure of feed pens, and the methods and purpose of feeding are the same at all five units and are identical to those at all other livestock feeding operations in the Salt River Valley. The character of the work performed by persons employed in all livestock feeding operations is agricultural. Migratory labor working at rates of pay prevalent for farm labor is employed (R. 114-252).

The feeding operations carried on by petitioner in the feedlot adjacent to its packing plant are separate and distinct from the operations of the plant. These feedlots have their own foreman. Persons employed are hired by a different employment agent than the one who hires indi-

viduals for work in the plant. There are no transfers of employees between these feedlots and the plant and there are no duties common to employees in the two operations (R. 232-233). The number of head of livestock in the feedlots adjacent to the plant is not dependent on the number of head slaughtered in the plant (R. 233). Forty per cent of the livestock fed in the feedlots adjacent to the plant are not processed in petitioner's plant, but are sold and shipped elsewhere on the hoof (R. 233). The livestock slaughtered in petitioner's packing plant are obtained from both petitioner's feedlots and from the feedlots of others (R. 188). Forty-six per cent of the livestock slaughtered in the plant are obtained from feedlots other than those of petitioner (R. 189).

All of petitioner's feedlots including those adjacent to the packing plant are separate and distinct in function and operation from the retaining corrals adjoining the plant where fattened livestock obtained from petitioner's feedlots and the feedlots of others are held for slaughter. These retaining corrals are a part of the plant operation and are similar in function to the stock yards in Chicago, Kansas City, and other large meat packing centers (R. 220).

The National Labor Relations Board has held that nine persons employed by petitioner in the feed lots adjacent to its packing plant were discharged for union activities in violation of Section 8(3) of the National Labor Relations Act, and that they were not agricultural laborers (R. 68-72, 75, 76, 78, 79, 92). It has ordered their reinstatement with back pay (R. 107). The Circuit Court of Appeals has granted enforcement of this order (R. 546).

These men were not employed in the retaining corrals where finished livestock are held for slaughter in petitioner's plant, but were employed exclusively in the feedlots in which petitioner carries on the livestock feeding operations hereinbefore described.



## Reasons for Allowing the Writ

In holding on the record in this case that these individuals are not agricultural laborers and that they are within the purview of the National Labor Relations Act (R. 537) the Circuit Court of Appeals has decided that under that Act a laborer who performs agricultural work in furtherance of an agricultural pursuit may, nevertheless, be deemed an industrial rather than an agricultural laborer solely by virtue of the geographical location of his employment or the nature of the principal business of his employer. Petitioner respectfully submits that this raises an important question of federal law which has not been, but should be, settled by this Court. The Circuit Court's interpretation of the term "agricultural laborer" as used in this federal statute is contrary to every judicial interpretation of that term made prior to the decision of the Circuit Court of Appeals in this case. The effect of such interpretation in extending the jurisdiction of the National Labor Relations Board is of obvious national significance. Wherever agricultural work is performed in proximity to and as an incident to an industrial operation, the Board's jurisdiction would extend to all those engaged in the performance of such work. Likewise all workers, irrespective of the geographical location of their employment, engaged in the production of agricultural products which are used in an industrial operation conducted by their employer would, under such an interpretation, be classified as industrial workers and as such be subject to the Board's jurisdiction. Examples indicating the extent to which this interpretation would extend the jurisdiction of the National Labor Relations Board are set forth in the accompanying brief.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued in the above-named cause, under the seal of this Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to this Court on a day to be

designated a transcript of the record in all proceedings had in such cause, to the end that so much of the decree as enforces the order of the National Labor Relations Board directing the reinstatement of persons formerly employed in petitioner's livestock feeding operations may be reviewed and determined by this Court; that said order be set aside and reversed in this one respect, and that petitioner be granted such other and further relief as may be just and proper.

Dated at Phoenix, Arizona, July 3, 1940.

DENISON KITCHEL,  
*Attorney for TOVREA PACKING COMPANY,*  
*Petitioner.*

